

REMARKS

The Office Action mailed March 17, 2009, considered and rejected claims 1, 5-7, 9-14, 18, 22, 24 and 25. Claims 1, 5-7, 9-14, 18, 22, 24 and 25 were rejected under 35 U.S.C. § 101 as not falling within one of the four statutory categories of invention. Claims 1, 9-11, 13, 14, 18 and 22-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mohsenin* et al. (U.S. Publ. No. 2005/0075895), in view of *Bucher* (U.S. Patent No. 6,928,476). Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mohsenin*, in view of *Bucher*, and further in view of *Snyder* et al. (U.S. Patent No. 5,564,109). Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mohsenin* in view of *Bucher*, and further in view of *Harrow* et al. (U.S. Publ. No. 2003/0009586). Claims 6 and 7 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Mohsenin* in view of *Bucher*, in view of *Snyder*, and further in view of *Domenikos* et al. (U.S. Patent No. 5,838,916).¹

By this response, claims 1 and 14 are amended. Support for the amendments may be found in paragraphs 24 and 27. Claims 1, 5-7, 9-14, 18, 22, 24, and 25 remain pending of which claims 1, 14, and 18 are independent.

Section 101 Rejections

Each of the method claims was rejected because the process is not tied to a machine. Applicant submits, however, that the limitations of claim 1 are sufficiently tied to the data acquisition device. Claim 1 has been amended to specifically recite that the method is performed by the data acquisition device which was already required by each of the limitations. For example, the first limitation states that a data object is created and stored on the data acquisition device. Thus, the data acquisition device is a specific machine that has a specific type of data object stored on it. The fourth limitation specifies that the data acquisition device establishes a communication session with an online connection service. As such, the data acquisition device is a specific machine (or computer) that establishes communication sessions for sending data objects to another machine, the storage device. Each of the limitations define concrete steps that can only be performed by a specific machine (a computer having the software for performing these steps installed). A human can not store a new data object in his mind (a data object is a

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

series of logical 1s and 0s), or establish a communication session with an online connection service to transfer the new data object to a different machine. It is further noted that any interpretation that the data acquisition device is the equivalent of the human mind is unreasonable in view of the specification or a common understanding of the art. For these reasons, the process claims satisfy the Bilski requirements under the particular machine prong.

Further, Applicant submits that the claimed process does involve a transformation. The new data object is transformed by sending it from one machine to another. The transformation occurs by causing bit patterns to exist on the storage device that did not exist previously. An intermediate transformation also occurs in sending the object over the connection. For these reasons, the process claims also satisfy the Bilski requirements under the transformation prong.

Finally, claim 14 has been amended to recite a recordable type medium rather than a computer readable medium. Paragraph 33 defines recordable type medium as a sub-type of computer readable media that does not encompass signals. Therefore, claim 14 is also drawn to statutory subject matter.

Prior Art Rejections

Claim 1 and claim 18 have not been amended to address the prior art rejections because the cited art does not teach or suggest the establishment of a communication session with the selected user storage device using the network address corresponding to the selected user storage device. In both Mohsenin and Bucher, the data originator (the sending device of Mohsenin or the initiating computer of Bucher) only establishes a connection with an intermediary, but does not in fact establish a connection with the storage device. For example, in Mohsenin, pictures are transferred via SMS, MMS, or email messages. The messages are forwarded first to the mobile service provider which in turn forwards the images to the storage service provider. "By sending an MMS, SMS message or e-mail, there is no need for the user of the mobile camera phone to maintain active dialog with the image service provider." ¶ 24. In other words, the phone does not connect to the storage device.

In Bucher, as shown in each of the figures, an intermediary service handles the transfer of the data to the remote device. "[T]he initiating computer transfers the segment of data to the service. The service then brokers or transfers the segment of data to the remote device." Col. 3, lines 10-13. In other words, the initiating computer never connects to the storage device. The difference between Bucher and the present invention is illustrated by the fact that the data

acquisition device of the present invention pulls data from the list which it uses to create a separate communication session with the storage device. In contrast, Bucher merely selects a device from the list to which the service forwards the provided data. As such, the combination of Mohsenin and Bucher fail to teach or suggest: "establishing a communication session with the selected user storage device using the network address corresponding to the selected user storage device," as claimed in combination with the remaining limitations.

Claim 14 has also been amended to include various additional aspects of the invention. For example, the claim further defines that the list is populated with available storage devices from which the online connection service has received presence information. This presence information is received using instant messaging technology. *See* ¶ 27. Further, the claim defines that the selection of the storage device is based on the connection route of the available user storage device. For example, if two storage devices are available, one having a direct connection route, the other having an indirect connection route, the storage device having the direct connection route may be selected. *See* ¶ 24.² The cited art also fails to address these limitations. Applicant therefore submits that the combination of Mohsenin and Bucher fails to render the independent claims obvious.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at (801) 533-9800.

² It is also noted that this selection is not performed by a user. Each of the independent claims state that the selection is performed by the data acquisition device (i.e. by executing instructions on the device). The specification states that the selection is performed using a selection process. *See* ¶ 24.

Dated this 17th day of June, 2009.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian Tucker". The signature is fluid and cursive, with the first name "Brian" and last name "Tucker" clearly distinguishable.

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